

FILED
DEC 13 2007

No. 79883-4

CLERK OF SUPREME COURT
STATE OF WASHINGTON

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOAN M. GRIFFITH,

Petitioner/Defendant

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STATE OF WASHINGTON
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ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF PARTY

Respondent, State of Washington, was the plaintiff in the trial court and the respondent in the Court of Appeals.

II. STATEMENT OF RELIEF SOUGHT

Respondent seeks denial of the petition for review.

III. ISSUE PRESENTED

(1) Did the trial court have a basis for its finding that defendant possessed over \$11,000 of the \$44,000 stolen from the victims?

IV. STATEMENT OF THE CASE

The defendant/petitioner Joan Griffith pled guilty in the Spokane County Superior Court to one count of possession of stolen property in the second degree. CP 2-8, 22. She originally had been charged with second degree trafficking in stolen property. CP 1.

The trial court, the Honorable Tari Eitzen, imposed a first offender sentence as requested by the parties. The judgment also directed that a restitution hearing be scheduled. CP 9-20.

The restitution hearing was held before the Honorable Linda Tompkins. It took place some three and one-half years after the crime. RP 1 *et seq.* One of the victims, Elaine Linscott, testified that when her house was burglarized, there had been total losses of \$44,000. Included was a \$5,000 pearl necklace that was recovered from the Eastern Washington Coin Company store that had purchased it from the defendant. There also was \$11,000 worth of other jewelry that was not recovered. RP 4-7. The victim expressly identified the \$11,000 as jewelry seen on the defendant at the time she visited the Coin Company. RP 7. Exhibit 1, a list of the missing property, was admitted at the hearing without objection. RP 5.

John Slaughter, a representative of the Coin Company also testified. RP 7-15. He remembered twice dealing with the defendant and purchasing a set of pearls for \$5,000 on one occasion. Defendant had a large plastic bag full of "stuff" that included a ring with a large stone that looked like the victim's missing two and half carat diamond ring. RP 9-10. He could not remember for certain what he had seen and was not certain that the large ring he saw was the victim's ring. RP 13-14.

During argument defense counsel made reference to the affidavit of facts on file in the case. The judge took recognition of that document over the objection of the prosecutor. RP 18-19; CP 29-31. Judge Tompkins ruled that the victim's testimony that the un-recovered jewelry

seen at the Coin Company was valued at \$11,000 supported a restitution order in that amount. The large diamond, for which the Coin Company had offered¹ the defendant \$500, also should be included. The court declined to double the amount and ordered that restitution be set at \$11,500. RP 25.

A written order to that effect was entered. CP 25-26. Defendant then appealed to the Court of Appeals. That court affirmed in a divided published decision. State v. Griffith, 136 Wn. App. 885, 151 P.3d 230 (2007). The majority found that substantial evidence, noted above, supported the decision and the trial court had not abused its discretion. Id. at 887, 891-892. Judge Schultheis dissented and argued that the evidence did not support the trial court's factual finding. Id. at 892-894.

Defendant then petitioned this court, contending that the restitution order was speculative. This court directed that an answer be filed.

V. ARGUMENT

The decision of the Court of Appeals does not present an issue justifying the grant of review. Petitioner argues that the relevant criterion supporting her request for review is RAP 13.4(b)(1). She contends that the Court of Appeals decision is in conflict with the decision in State v. Kinneman, 155 Wn.2d 272, 119 P.3d 350 (2005), because the

¹ CP 30.

amount of the loss was “speculative” (Petition for Review at p. 4). There is no conflict and, thus, review should be denied.

The authority to enter an order of restitution is purely statutory. State v. Davison, 116 Wn. 2d 917, 919, 809 P.2d 1374 (1991). “When the particular type of restitution in question is authorized by statute, imposition of restitution is generally within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion.” Id. Discretion is abused when it is exercised on untenable grounds or for untenable reasons. State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

RCW 9.94A.753(3) provides:

Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender’s gain or the victim’s loss from the commission of the crime.

When called upon to construe this provision, the Davison court noted: “The very language of the restitution statutes indicates legislative intent to grant broad powers of restitution.” 116 Wn.2d at 920.

The defense argues here that the restitution award was “speculative” because there was not a sufficient connection between the missing jewelry and the fact that defendant had a bag of items, including some belonging to the victims, when she visited the Coin Company. The record supports the trial court’s conclusion that the other items belonged to the Linscotts. Elaine Linscott told the court that Mr. Slaughter had seen “many of my gem stones” and described several of her missing rings. RP 5-6. She valued the missing jewelry at \$11,000. RP 7. While her basis of knowledge² may be questioned given its hearsay nature, this testimony did provide a factual basis for the trial court’s order. Indeed, Elaine Linscott’s testimony was cited by Judge Tompkins as the basis for that conclusion. RP 24. It also was not surprising that Mr. Slaughter did not remember all of the particulars of the transaction that had occurred several years earlier. The trial court was permitted to credit his original description of the property as related by Mrs. Linscott.

Thus, the trial court’s ruling was not “speculative.” There simply is no conflict with Kinneman, a case that involved complicated accounting testimony. There this court noted that a restitution award must not be speculative, but also did not need to be precise: “However, while restitution must be based on ‘easily ascertainable damages,’ the ‘amount of

² Defendant did not object to the testimony. Regardless, the Rules of Evidence do not apply in sentencing proceedings. ER 1101(c)(3).

harm or loss 'need not be established with specific accuracy.'" Id. at 356 (internal citations omitted).

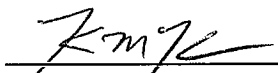
This case fits that description. Defendant had been seen years earlier in possession of quite a bit of the stolen jewelry and had sold the most valuable piece at that time. There was a factual basis for the award. It was only one-quarter of what the victims had lost, but it was for the amount that had been identified in the defendant's custody after the crime. While perhaps not precise, the evidence was sufficient to allow the trial court to award what it did.

There was no conflict with existing authority on either issue. Review is not appropriate under the RAP 13.4(b)(1) criterion. Thus, the petition for review should be denied.

VI. CONCLUSION

For the reasons stated above, respondent requests that the court deny the petition for review.

Respectfully submitted this 10 day of December, 2007.


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